

PEACE, AMITY, AND COMMERCE

*Treaty signed at Tientsin June 18, 1858, supplementing and revising treaty of July 3, 1844*¹

Senate advice and consent to ratification December 15, 1858

Ratified by the President of the United States December 21, 1858

Ratified by China August 9, 1859

Ratifications exchanged at Pehtang August 16, 1859

Entered into force August 16, 1859

Proclaimed by the President of the United States January 26, 1860

Supplemented by agreements of November 8, 1858,² and July 28, 1868,³ and November 17, 1880⁴

Article XIV modified October 21, 1863; article XIX modified July 11, 1867; and article XXI modified April 7, 1863

All provisions continued in force by treaty of October 8, 1903, "except in so far as they are modified by the present Treaty or other treaties to which the United States is a party"⁵

Second sentence of article XVIII abrogated by the United States July 1, 1916, in accordance with Seamen's Act of March 4, 1915⁶

Superseded November 30, 1948, by treaty of November 4, 1946⁷

12 Stat. 1023; Treaty Series 46⁸

The United States of America and the Ta Tsing Empire, desiring to maintain firm, lasting, and sincere friendship, have resolved to renew, in a manner clear and positive, by means of a Treaty or general convention of peace, amity and commerce, the rules which shall in future be mutually observed in the intercourse of their respective countries; for which most desirable object, the President of the United States and the August Sovereign of the Ta Tsing Empire, have named for their Plenipotentiaries to wit: The Presi-

¹ TS 45, *ante*, p. 647.

² TS 47 and TS 47-1, *post*, pp. 671 and 678.

³ TS 48, *post*, p. 680.

⁴ TS 49, *post*, p. 685.

⁵ TS 430, *post*, p. 704 (art. XVII).

⁶ 38 Stat. 1164.

⁷ TIAS 1871, *post*, p. 761.

⁸ For a detailed study of this treaty, see 7 Miller 793.

dent of the United States of America, William B. Reed, Envoy Extraordinary and Minister Plenipotentiary to China and His Majesty the Emperor of China, Kweiliang, a member of the Privy Council and Superintendent of the Board of Punishments; and Hwashana, President of the Board of Civil Office and Major General of the Bordered Blue Banner Division of the Chinese Bannermen, both of them being Imperial Commissioners and Plenipotentiaries: And the said Ministers, in virtue of the respective full powers they have received from their Governments, have agreed upon the following articles.

ARTICLE I

There shall be, as there have always been, peace and friendship between the United States of America and the Ta Tsing Empire, and between their people respectively. They shall not insult or oppress each other for any trifling cause so as to produce an estrangement between them, and, if any other nation should act unjustly or oppressively, the United States will exert their good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings.

ARTICLE II

In order to perpetuate friendship, on the exchange of ratifications by the President, with the advice and consent of the Senate of the United States, and by His Majesty the Emperor of China, this treaty shall be kept and sacredly guarded in this way: viz: The Original treaty as ratified by the President of the United States, shall be deposited at Peking, the capital of His Majesty the Emperor of China in charge of the Privy Council; and as ratified by His Majesty the Emperor of China, shall be deposited at Washington, the capital of the United States, in charge of the Secretary of State.

ARTICLE III

In order that the people of the two countries may know and obey the provisions of this treaty, the United States of America agree immediately on the exchange of ratifications to proclaim the same and to publish it by proclamation in the gazettes where the laws of the United States of America are published by authority and His Majesty the Emperor of China, on the exchange of ratifications, agrees immediately to direct the publication of the same at the capital and by the Governors of all the Provinces.

ARTICLE IV

In order further to perpetuate friendship, the Minister or Commissioner or the highest diplomatic representative of the United States of America in China, shall at all times have the right to correspond on terms of perfect equality and confidence with the Officers of the Privy Council at the capital,

or with the Governors General of the Two Kwangs, the Provinces of Fuhkien and Chehkiang or of the Two Kiangs, and whenever he desires to have such correspondence with the Privy Council at the Capital, he shall have the right to send it through either of the said Governors General or by the General Post, and all such communications shall be sent under seal which shall be most carefully respected. The Privy Council and Governors General, as the case may be, shall in all cases consider and acknowledge such communications promptly and respectfully.

ARTICLE V

The Minister of the United States of America in China, whenever he has business, shall have the right to visit and sojourn at the Capital of His Majesty the Emperor of China, and there confer with a member of the Privy Council, or any other high officer of equal rank deputed for that purpose, on matters of common interest and advantage. His visits shall not exceed one in each year, and he shall complete his business without unnecessary delay. He shall be allowed to go by land or come to the mouth of the Peiho, into which he shall not bring ships of war and he shall inform the authorities at that place in order that boats may be provided for him to go on his journey. He is not to take advantage of this stipulation to request visits to the capital on trivial occasions. Whenever he means to proceed to the capital he shall communicate in writing his intention to the Board of Rites at the capital, and thereupon the said Board shall give the necessary directions to facilitate his journey and give him necessary protection and respect on his way. On his arrival at the capital, he shall be furnished with a suitable residence prepared for him and he shall defray his own expenses and his entire suite shall not exceed twenty persons, exclusive of his Chinese attendants, none of whom shall be engaged in trade.

ARTICLE VI

If at any time His Majesty the Emperor of China shall by Treaty voluntarily made, or for any other reason, permit the Representative of any friendly nation to reside at his Capital for a long or short time, then without any further consultation or express permission, the Representative of the United States in China shall have the same privilege.

ARTICLE VII

The superior authorities of the United States and of China in corresponding together, shall do so on terms of equality, and in form of mutual communication (*chau hwui*). The consuls and the local officers, civil and military, in corresponding together, shall likewise employ the style and form of mutual communication (*chau-hwui*). When inferior officers of the one government address superior officers of the other, they shall do so in the style and form of memorial (*shin chin*). Private individuals in addressing superior officers,

shall employ the style of petition (pin ching). In no case shall any terms or style be used or suffered which shall be offensive or disrespectful to either party. And it is agreed that no presents, under any pretext or form whatever shall ever be demanded of the United States by China, or of China by the United States.

ARTICLE VIII

In all future personal intercourse between the Representative of the United States of America and the Governors General or Governors the interviews shall be had at the official residence of the said officers or at their temporary residence or at the residence of the Representative of the United States of America, whichever may be agreed upon between them nor shall they make any pretext for declining these interviews. Current matters shall be discussed by correspondence so as not to give the trouble of a personal meeting.

ARTICLE IX

Whenever national vessels of the United States of America in cruising along the coast and among the ports opened for trade, for the protection of the commerce of their country, or for the advancement of science, shall arrive at or near any of the ports of China, Commanders of said ships and the superior local authorities of Government shall, if it be necessary, hold intercourse on terms of equality and courtesy in token of the friendly relations of their respective nations, and the said vessels shall enjoy all suitable facilities on the part of the Chinese Government in procuring provisions or other supplies and making necessary repairs. And the United States of America agree that in case of the shipwreck of any American vessel and its being pillaged by pirates or in case any American vessel shall be pillaged or captured by pirates, on the seas adjacent to the coast, without being shipwrecked, the national vessels of the United States shall pursue the said pirates, and if captured deliver them over for trial and punishment.

ARTICLE X

The United States of America shall have the right to appoint Consuls and other commercial Agents for the protection of trade to reside at such places in the dominions of China as shall be agreed to be opened, who shall hold official intercourse and correspondence with the local Officers of the Chinese Government (a Consul or a Vice-Consul in charge taking rank with an intendant of circuit or a prefect) either personally or in writing as occasions may require, on terms of equality and reciprocal respect. And the Consuls and local Officers shall employ the style of mutual communication. If the Officers of either nation are disrespectfully treated or aggrieved in any way by the other authorities they have the right to make representation of the same to the Superior Officers of the respective Governments who shall see that full inquiry and strict justice shall be had in the premises; and the said Consuls

and Agents shall carefully avoid all acts of offense to the officers and people of China. On the arrival of a Consul duly accredited at any port in China, it shall be the duty of the Minister of the United States to notify the same to the Governor General of the Province where such port is, who shall forthwith recognize the said Consul and grant him authority to act.

ARTICLE XI

All citizens of the United States of America in China, peaceably attending to their affairs, being placed on a common footing of amity and good will with subjects of China, shall receive and enjoy for themselves and everything appertaining to them the protection of the local authorities of government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the Consul, shall immediately dispatch a military force to disperse the rioters, apprehend the guilty individuals and punish them with the utmost rigor of the law. Subjects of China guilty of any criminal act towards citizens of the United States shall be punished by the Chinese authorities according to the laws of China. And citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble or wound the persons or injure the property of Chinese or commit any other improper act in China, shall be punished only by the Consul or other public functionary thereto authorised according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.

ARTICLE XII

Citizens of the United States residing or sojourning at any of the ports open to foreign commerce shall be permitted to rent houses and places of business or hire sites on which they can themselves build houses or hospitals, churches and cemeteries. The parties interested can fix the rent by mutual and equitable agreement, the proprietors shall not demand an exorbitant price, nor shall the local authorities interfere unless there be some objections offered on the part of the inhabitants respecting the place. The legal fees to the officers for applying their seal shall be paid. The citizens of the United States shall not unreasonably insist on particular spots but each party shall conduct with justice and moderation. Any desecration of the cemeteries by natives of China shall be severely punished according to law. At the places where the ships of the United States anchor or their citizens reside, the merchants seamen or others can freely pass and repass in the immediate neighbourhood, but in order to the preservation of the public peace, they shall not go into the country to the villages and marts to sell their goods unlawfully in fraud of the revenue.

ARTICLE XIII

If any vessel of the United States be wrecked or stranded on the coast of China, and be subjected to plunder or other damage, the proper officers of Government, on receiving information of the fact, shall immediately adopt measures for its relief and security: the persons on board shall receive friendly treatment and be enabled to repair at once to the nearest port, and shall enjoy all facilities for obtaining supplies of provisions and water. If the merchant vessels of the United States, while within the waters over which the Chinese Government exercises jurisdiction, be plundered by robbers or pirates, then the Chinese local authorities civil and military, on receiving information thereof, shall arrest the said robbers or pirates, and punish them according to law, and shall cause all the property which can be recovered, to be restored to the owners or placed in the hands of the Consul. If by reason of the extent of territory and numerous population of China, it shall in any case happen that the robbers cannot be apprehended, and the property only in part recovered, the Chinese Government shall not make indemnity for the goods lost. But if it shall be proved that the local authorities have been in collusion with the robbers, the same shall be communicated to the superior authorities for memorializing the Throne and these officers shall be severely punished and their property be confiscated to repay the losses.

ARTICLE XIV⁹

The citizens of the United States are permitted to frequent the ports and cities of Canton and Chau-chau or Swatau, in the Province of Kwang-tung: Amoy, Fuh-chau, and Tai-wan in Formosa, in the Province of Fuh-Kien: Ningpo in the Province of Cheh-Kiang and Shanghai in the Province of Kiang-su, and any other port or place hereafter by treaty with other powers or with the United States opened to commerce, and to reside with their families and trade there: and to proceed at pleasure with their vessels and merchandize from any of these ports to any other of them. But said vessels shall not carry on a clandestine and fraudulent trade at other ports of China not declared to be legal or along the coasts thereof; and any vessel under the American flag violating this provision shall, with her cargo, be subject to confiscation to the Chinese Government; and any citizen of the United States who shall

⁹ A modification of art. XIV proposed by China Sept. 22, 1863, and agreed to by the American Minister Oct. 21, 1863, pending reference to Washington, provided that the penalty for presenting a false manifest of cargo be that contained in the treaty of peace, friendship, and commerce of June 26, 1858, between China and Great Britain, which read as follows:

"For presenting a false manifest, he [the master] will subject himself to a fine of 500 taels; but he will be allowed to correct, within 24 hours after delivery of it to the Customs officers, any mistake he may discover in his manifest, without incurring this penalty." (48 BFSP 55.)

The modification was approved by the United States.

trade in any contraband article of merchandize, shall be subject to be dealt with by the Chinese Government, without being entitled to any countenance or protection from that of the United-States; and the United States will take measures to prevent their flag from being abused by the subjects of other nations as a cover for the violation of the laws of the Empire.

ARTICLE XV

At each of the ports open to Commerce, citizens of the United States shall be permitted to import from abroad and sell, purchase, and export, all merchandize of which the importation or exportation is not prohibited by the laws of the Empire. The Tariff of duties to be paid by citizens of the United States on the export and import of goods from and into China shall be the same as was agreed upon at the Treaty of Wanghia, except so far as it may be modified by treaties with other nations; it being expressly agreed that citizens of the United States shall never pay higher duties than those paid by the most favoured nation.

ARTICLE XVI

Tonnage duties shall be paid on every merchant vessel belonging to the United States entering either of the open ports at the rate of four mace per ton of forty cubic feet, if she be over one hundred and fifty tons burden: and one mace per ton of forty cubic feet, if she be of the burden of one hundred and fifty tons or under, according to the tonnage specified in the register, which with her other papers, shall on her arrival, be lodged with the Consul, who shall report the same to the Commissioner of Customs. And if any vessel having paid tonnage duty at one port shall go to any other port to complete the disposal of her cargo, or being in ballast to purchase an entire or fill up an incomplete cargo, the Consul shall report the same to the Commissioner of customs, who shall note on the port clearance that the tonnage duties have been paid and report the circumstances to the collectors at the other customs-houses, in which case the said vessel shall only pay duty on her cargo, and not be charged with tonnage duty a second time. The collectors of customs at the open ports shall consult with the consuls about the erection of beacons or light houses, and where buoys and light-ships should be placed.

ARTICLE XVII

Citizens of the United States shall be allowed to engage pilots to take their vessels into port, and when the lawful duties have all been paid, take them out of port. It shall be lawful for them to hire at pleasure servants, compradores, linguists, writers, labourers, seamen and persons for whatever necessary service with passage or cargo boats for a reasonable compensation, to be agreed upon by the parties, or determined by the Consul.

ARTICLE XVIII

Whenever merchant vessels of the the United States shall enter a port, the collector of customs shall, if he see fit, appoint custom house Officers to guard said vessels, who may live on board the ship or their own boats at their convenience. The local authorities of the Chinese Government shall cause to be apprehended all mutineers or deserters from on board the vessels of the United States in China on being informed by the Consul, and will deliver them up to the consuls or other officers for punishment.¹⁰ And if criminals, subjects of China, take refuge in the houses or on board the vessels of citizens of the United States, they shall not be harboured or concealed, but shall be delivered up to justice, on due requisition by the Chinese local Officers, addressed to those of the United States. The merchants, seamen and other citizens of the United States, shall be under the superintendence of the appropriate officers of their government. If individuals of either nation commit acts of violence or disorder, use arms to the injury of others, or create disturbances endangering life, the Officers of the two governments will exert themselves to enforce order, and to maintain the public peace by doing impartial justice in the premises.

ARTICLE XIX ¹¹

Whenever a merchant vessel belonging to the United States shall cast anchor in either of the said ports, the supercargo, master or consignee, shall within forty eight hours, deposit the ship's papers in the hands of the Consul, or person charged with his functions, who shall cause to be communicated to the superintendant of customs a true report of the name and tonnage of such vessel, the number of her crew and the nature of her cargo, which being done, he shall give a permit for her discharge. And the master, supercargo or consignee, if he proceed to discharge the cargo without such permit, shall incur a fine of five hundred dollars, and the goods so discharged without permit shall be subject to forfeiture to the Chinese Government. But

¹⁰ Second sentence of art. XVIII abrogated July 1, 1916, in accordance with Seamen's Act of Mar. 4, 1915 (38 Stat. 1164).

¹¹ A modification of art. XIX, subject to ratification by the United States, was agreed to on July 11, 1867, by the American Minister and the Chinese Government. On Jan. 20, 1868, the Senate adopted the following resolution of advice and consent to the proposed modification:

"Resolved, (two thirds of the Senators present concurring) That the Senate do advise and consent to the modification of the treaty between the United States and China concluded at Tientsin on the 18th of June 1858, so that the nineteenth article shall be understood to include hulks and storeships of every kind under the term merchant vessels: and so that it shall provide that if the supercargo, master, or consignee shall neglect, within forty-eight hours after a vessel casts anchor in either of the ports named in the treaty, to deposit the ships papers in the hands of the consul or person charged with his functions, who shall then comply with the requisitions of the nineteenth article of the treaty in question, he shall be liable to a fine of fifty taels for each days delay, the total amount of penalty however shall no: exceed two hundred taels."

if a master of any vessel in port desire to discharge a part only of the cargo, it shall be lawful for him to do so, paying duty on such part only, and to proceed with the remainder to any other ports. Or if the master so desire, he may within forty-eight hours after the arrival of the vessel, but not later, decide to depart without breaking bulk; in which case he shall not be subject to pay tonnage or other duties or charges, until on his arrival at another port, he shall proceed to discharge cargo, when he shall pay the duties on vessel and cargo according to law. And the tonnage duties shall be held due after the expiration of the said forty-eight hours. In case of the absence of the Consul or person charged with his functions, the captain or supercargo of the vessel may have recourse to the Consul of a friendly power, or if he please, directly to the Superintendent of customs, who shall do all that is required to conduct the ship's business.

ARTICLE XX

The Superintendent of customs in order to the collection of the proper duties, shall on application made to him through the consul, appoint suitable officers, who shall proceed in the presence of the captain, supercargo or consignee, to make a just and fair examination of all goods in the act of being discharged for importation, or laden for exportation, on board any merchant vessel of the United States. And if disputes occur in regard to the value of goods subject to ad valorem duty, or in regard to the amount of tare, and the same cannot be satisfactorily arranged by the parties, the question may within twenty four hours, and not afterwards, be referred to the said consul to adjust with the superintendent of customs.

ARTICLE XXI ¹²

Citizens of the United States who may have imported merchandize into any of the free ports of China, and paid the duty thereon, if they desire to reëxport the same in part or in whole to any other of the said ports, shall be entitled to make application through their Consul, to the superintendent of customs, who in order to prevent fraud on the revenue, shall cause examination to be made by suitable officers to see that the duties paid on such goods as are entered on the custom-house books, correspond with the representation made, and that the goods remain with their original marks

¹² On Apr. 7, 1863, the American Minister and the Government of China agreed, subject to ratification by the United States, that art. XXI "shall be so modified as to permit duties to be paid, when goods are re-exported from any one of the free ports of China, at the port into which they are finally imported, and that drawbacks shall be substituted for exemption certificates at all the ports, which drawbacks shall be regarded as negotiable and transferable articles and be accepted by the Custom House from whatsoever merchant who may tender them either for import or export duty to be paid by him". By a resolution of Feb. 4, 1864, the Senate gave its advice and consent to the modification, and it was accepted, ratified, and confirmed by the President on Feb. 22, 1864.

unchanged, and shall then make a memorandum in the port clearance, of the goods and the amount of duties paid on the same, and deliver the same to the merchant, and shall also certify the facts to the officers of customs of the other ports; all which being done, on the arrival in port of the vessel in which the goods are laden, and everything being found on examination there to correspond, she shall be permitted to break bulk and land the said goods, without being subject to the payment of any additional duty thereon. But if on such examination, the superintendant of customs shall detect any fraud on the revenue in the case, then the goods shall be subject to forfeiture and confiscation to the Chinese Government. Foreign grain or rice brought into any port of China in a ship of the United States, and not landed, may be re-exported without hindrance.

ARTICLE XXII

The tonnage duty on vessels of the United States shall be paid on their being admitted to entry. Duties of import shall be paid on the discharge of the goods, and duties of export on the lading of the same. When all such duties shall have been paid and not before, the collector of customs shall give a port clearance, and the Consul shall return the ship's papers. The duties shall be paid to the shroffs authorized by the Chinese Government to receive the same. Duties shall be paid and received either in sycee silver or in foreign money at the rate of the day. If the Consul permits a ship to leave the port before the duties and tonnage dues are paid, he shall be held responsible therefor.

ARTICLE XXIII

When goods on board any merchant vessel of the United States in port require to be transhipped to another vessel, application shall be made to the consul, who shall certify what is the occasion therefor to the Superintendent of customs, who may appoint officers to examine into the facts and permit the transshipment. And if any goods be transhipped without written permits, they shall be subject to be forfeited to the Chinese Government.

ARTICLE XXIV

Where there are debts due by subjects of China to citizens of the United States, the latter may seek redress in law; and on suitable representations being made to the local authorities through the consul, they will cause due examination in the premises, and take proper steps to compel satisfaction—And if citizens of the United States be indebted to subjects of China, the latter may seek redress by representation through the consul, or by suit in the Consular Court: But neither government will hold itself responsible for such debts.

ARTICLE XXV

It shall be lawful for the officers or citizens of the United States to employ scholars and people of any part of China without distinction of persons to teach any of the languages of the Empire, and to assist in literary labours; and the persons so employed shall not for that cause be subject to any injury on the part either of the government or of individuals; and it shall in like manner be lawful for citizens of the United States to purchase all manner of books in China.

ARTICLE XXVI

Relations of peace and amity between the United States and China being established by this treaty, and the vessels of the United States being admitted to trade, freely to and from the ports of China open to foreign commerce, it is further agreed, that in case at any time hereafter China should be at war with any foreign nation whatever, and should for that cause exclude such nation from entering her ports, still the vessels of the United States shall not the less continue to pursue their commerce in freedom and security, and to transport goods to and from the ports of the belligerent powers, full respect being paid to the neutrality of the flag of the United States: provided that the said flag shall not protect vessels engaged in the transportation of officers or soldiers in the enemy's service, nor shall said flag be fraudulently used to enable the enemy's ships with their cargoes to enter the ports of China: but all such vessels so offending shall be subject to forfeiture and confiscation to the Chinese Government.

ARTICLE XXVII

All questions in regard to rights whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own government. And all controversies occurring in China between citizens of the United States and the subjects of any other government, shall be regulated by the treaties existing between the United States and such Governments respectively without interference on the part of China.

ARTICLE XXVIII

If citizens of the United States have special occasion to address any communication to the Chinese local officers of government, they shall submit the same to their consul or other officer to determine if the language be proper and respectful, and the matter just and right, in which event he shall transmit the same to the appropriate authorities for their consideration and action in the premises. If subjects of China have occasion to address the Consul of the United States, they may address him directly at the same time they inform their own officers, representing the case for his consideration and action in

the premises. And if controversies arise between citizens of the United States and subjects of China, which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction. The extortion of illegal fees is expressly prohibited. Any peaceable persons are allowed to enter the court in order to interpret, lest injustice be done.

ARTICLE XXIX

The principles of the Christian religion as professed by the Protestant and Roman Catholic churches, are recognized as teaching men to do good, and to do to others as they would have others do to them. Hereafter, those who quietly profess and teach these doctrines shall not be harassed or persecuted on account of their faith. Any person, whether citizen of the United States or Chinese convert, who according to these tenets peaceably teach and practice the principles of Christianity, shall in no case be interfered with or molested.

ARTICLE XXX

The contracting parties hereby agree that should at any time the Ta Tsing Empire, grant to any nation or the merchants or citizens of any nation, any right, privilege or favour, connected either with navigation, commerce, political or other intercourse which is not conferred by this treaty, such right, privilege and favour shall at once freely enure to the benefit of the United States, its public officers, merchants and citizens.

The present treaty of peace, amity and commerce shall be ratified by the President of the United States, by and with the advice and consent of the Senate, within one year, or sooner, if possible, and by the August Sovereign of the Ta Tsing Empire forthwith: and the ratifications shall be exchanged within one year from the date of the signatures thereof.¹³

In faith whereof, we the Respective Plenipotentiaries of the United States of America and of the Ta Tsing Empire, as aforesaid, have signed and sealed these presents.

Done at Tientsin, this eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty eight, and the Independence of the United States of America the eighty second, and in the eighth year of Hienfung, fifth month and eighth day.

WILLIAM. B. REED		[SEAL]
KWEILIANG	[ideographic signature]	[SEAL]
HWASHANA	[ideographic signature]	[SEAL]

¹³ For a note regarding the delay in the exchange of instruments of ratification, see 7 Miller 913.